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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,940	05/10/2001	Debra Sue Caswell	8082M	5827

27752 7590 10/23/2003

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
WINTON HILL TECHNICAL CENTER - BOX 161  
6110 CENTER HILL AVENUE  
CINCINNATI, OH 45224

EXAMINER

HARDEE, JOHN R

ART UNIT PAPER NUMBER

1751

DATE MAILED: 10/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/852,940

Applicant(s)

CASWELL ET AL.

Examiner

John R Hardee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-64 is/are pending in the application.
- 4a) Of the above claim(s) 2,5-15,25-54 and 56-64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,17-24 and 55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. Applicant's IDS, Paper No. 7, was considered and sent with the first office action. Another copy is being sent with this office action.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 3, 4, 17-24 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended the claims to recite the presence of an effective amount of a solvent. Effective to do what? Given that a zero amount of the solvent may be present, it is unclear whether there is any function that the solvent need perform.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claims 1, 3, 4, 17-24 and 55 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Bacon et al., US 5,500,138. The reference discloses liquid and solid biodegradable, rinse-added fabric softening compositions with highly enduring substantive perfumes. While many of applicant's perfume limitations can be met by this

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reference, it is not clear what is in the perfume of Example 11, so the perfume limitations have been withdrawn from consideration. Compositions according to the invention comprise about 50-95% of biodegradable cationic fabric softening compound, which is preferably diester; 0.01-15% of an enduring perfume composition; up to 30% of a dispersibility modifier and a liquid carrier (col. 2, lines 4+). Liquid compositions according to the invention comprise about 0.5-80% of quat, about 0.01-10% of perfume, up to 30% of dispersibility modifier and a liquid carrier. Suitable liquid carriers include polyhydric alcohols of 2-6 carbons, making obvious the use of six-carbon diols (col. 3, lines 15-16). Water may be added, but amounts are generally low (col. 3, lines 40+. As water is optional, it would be obvious to formulate a nil-water composition. Suitable quats are disclosed at col. 3, lines 59+. The viscosity, phase transition and flash point limitations appear to be met because the recited chemical limitations have been met. The Office does not have the facilities to determine such. Note the diester quat at col. 6, line 32. Suitable dispersibility modifiers are of the form shown at col. 13, lines 43+.

Regarding claim 24, applicant's specification does not make clear whether or not the composition of Example 11 is translucent or clear but, because this composition can be made by following the teachings of the reference, it would be obvious to make a clear or translucent composition if this composition is clear or translucent. Claim 55 is drawn to the intended use of a rinse added fabric softener, and therefore it does not define the invention over the prior art. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

***Allowable Subject Matter***

6. Applicant's elected composition is allowable over the prior art of record. Reasons are of record in the first office action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read "J. Hardee", written in a cursive style.

John R. Hardee  
Primary Examiner  
October 22, 2003